

1 Dean T. Kirby, Jr., Bar No. 090114  
2 KIRBY & MCGUINN, A P.C.  
3 600 B Street, Suite 1950  
4 San Diego, CA 92101-4515  
Telephone: (619) 685-4000  
Facsimile: (619) 685-4004  
dkirby@kirkymac.com

5 Louis W. Diess, III  
6 McCARRON & DIESSESS  
7 4900 Massachusetts Ave., N.W., Suite 310  
Washington, D.C. 20016  
Telephone: (202) 364-0400  
Facsimile: (202) 364-2731  
ldiess@mccarronlaw.com

8  
9 Attorneys for Plaintiff

10  
11 IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12  
13 CHIQUITA FRESH, N.A., L.L.C.

14 Plaintiff : Civil Action No: 08-CV714 JLS(POR)

15 v. :

16 SAMMY'S PRODUCE, INC., et al :

17 Defendants : DECLARATION IN SUPPORT  
OF APPLICATIONS FOR  
TEMPORARY RESTRAINING  
ORDER WITH NOTICE  
AND PRELIMINARY INJUNCTION

18 Joe Beckman, being duly sworn, deposes and says:

19 1. I am a credit and collections specialist of Chiquita Fresh, N.A., L.L.C.  
20 ("Chiquita"), and make this Affidavit in support of an application for emergency relief  
21 pursuant to Rule 65 of the Federal Rules of Civil Procedure.

22 2. I am personally familiar with all matters which are the subject of this  
23 proceeding and the facts set forth in this declaration are within my personal knowledge. If  
24 called upon as a witness, I would and could competently testify to all facts stated in this  
25 declaration.

26 3. Chiquita is a limited liability corporation with a principal place of business in  
27 Cincinnati, Ohio, which sells wholesale quantities of perishable agricultural commodities  
28 (hereafter "produce"). Chiquita is a produce dealer subject to and licensed under the

1 Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §499a et. seq.  
2 (hereafter "PACA").

3       4.       a.       Sammy's Produce, Inc. ("Sammy's Produce") is a produce dealer as  
4 defined by 7 U.S.C. §499a and operates subject to and is licensed under the PACA.

5       b.       Upon information and belief, Yan Skwara, Samuel V. Nucci and  
6 Darin Pines are and were responsible for the day-to-day operations of Sammy's Produce  
7 during the time in question and were in a position of control over the PACA trust assets  
8 belonging to Chiquita.

9       5.       The sales and accounts receivable records of Chiquita including invoices  
10 and account statements, are made in the ordinary course of business and are made at  
11 or near the time of the occurrence of the event of which they are a record. These  
12 business records are made by me or under my direction and supervision by  
13 employees whose duty it is to prepare such documents.

15       6.       My responsibilities include monitoring the sale of produce, including  
16 those sales that are the subject of this dispute. My responsibilities also include  
17 supervising collection of the accounts receivable for such sales, including Sammy's  
18 Produce's account which is the subject of the present application. I have custody and  
19 control of the sales and accounts receivable records of Chiquita as they relate to  
20 Sammy's Produce and I am thoroughly familiar with the manner in which those records  
21 are compiled.

22       7.       Between February 15, 2008 and March 12, 2008, Chiquita sold and  
23 delivered to defendants, in interstate commerce, various wholesale lots of produce worth  
24 \$73,545.90 which remains unpaid. (Copies of the outstanding invoices are attached  
25 hereto as Exhibit 1.)

26       8.       Defendants accepted the produce received from Chiquita.

27       9.       Chiquita preserved its interest in the PACA trust in the amount of  
28 \$73,545.90 by timely delivering invoices to defendants, which contained the language

1 required under Section 5(c) of the Perishable Agricultural Commodities Act ("PACA"), 7  
2 U.S.C. §499e(c). (See Exhibit 1 attached hereto.)

3 10. Defendants are obligated to hold in trust all produce-related assets  
4 received from the sale of produce in order to pay \$73,545.90 to Chiquita.

5 11. On April 10, 2008, I spoke with Tiffany in the accounts payable department  
6 of Sammy's Produce to request payment. Tiffany told me that Sammy's Produce was  
7 having severe cash flow problems and under strict orders from management not to pay  
8 any invoices. Tiffany then told me that she was not sure if and when payment would be  
9 made to Chiquita.

10 12. Defendants' failure, refusal and inability to pay, demonstrate that  
11 defendants are failing to maintain sufficient assets in the statutory trust, and are  
12 dissipating assets.

13 14. Unless the assets of the defendant corporation are frozen, it is likely the  
14 trust assets will continue to be dissipated. As a result, Chiquita will suffer immediate and  
15 irreparable harm because it will lose the trust assets and rights that are owed under the  
16 statute.

17 18. No provisional remedy has been secured or sought in this action, and no  
19 prior application has been made for the same or similar relief as is sought herein.

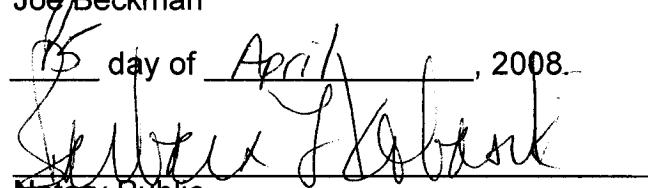
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on April 15th, 2008

22 CHIQUITA FRESH, N.A., L.L.C.

23   
Joe Beckman

24 Subscribed and sworn to before me this 15 day of April, 2008.

25   
Notary Public

26 My commission expires: 9-4-2012

27 Declaration in Support of Application for Temporary Restraining Order  
28 With Notice and Preliminary Injunction - 3

## INVOICE

REMIT TO  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SHIP TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469  
SAMMYCA

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083  
SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/13/08	NET 10	2/24/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
84	CU CU CUCUMBER 30V CQ PL				5.85	491.40
84	Total				SALES AMOUNT	491.40
					OTHER COST AMOUNT	
REMARKS	CURRENCY	USD			TOTAL AMOUNT DUE:	491.40

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(c) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499e(d)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

REMIT  
TO  
SOLD  
TO  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469

SAMMYCA

SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083

SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN

PLEASE CORRECT ON REMITTANCE COPY

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUUE DATE	INTERNAL INFORMATION
NA	F	2/15/08	NET 10	2/25/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
790	TM TM ROMA TOMATO 25V CQ SM				5.85	4,621.50
790	Total				SALES AMOUNT	4,621.50
					OTHER COST AMOUNT	
REMARKS	CURRENCY	USD			TOTAL AMOUNT DUE:	4,621.50

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(c) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499e(c)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

REMIT TO  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SOLD TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469  
SAMMYCA

SHIP TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083  
SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/20/08	NET 10	3/02/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
84	CU	CU	CUCUMBER		8.95	751.80
	30V	CQ	30V CQ	PL		
1056	TM	TM	TOMATO		8.95	9,451.20
	25V	CQ	25V CQ	4X4		
264	TM	TM	TOMATO		8.95	2,362.80
	25V	CQ	25V CQ	4X5		
175	TM	TM	TOMATO		10.95	1,916.25
	25V	CQ	25V CQ	5X5		
1579	Total				SALES AMOUNT	14,482.05
					OTHER COST AMOUNT	
REMARKS	CURRENCY	USD			TOTAL AMOUNT DUE:	14,482.05

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(g) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499e(n)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

REMIT TO  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SOLD TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469  
SAMMYCA

SHIP TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083  
SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/21/08	NET 10	3/03/08	

QUANT.	PRODUCT CODE					PRICE PER	AMOUNT
98	PP	GP	GREEN PEPPER			6.95	681.10
	30V	CQ	30V CQ	CHOIC			
800	TM	TM	ROMA TOMATO			7.95	6,360.00
	25V	CQ	25V CQ	MD			
560	TM	TM	ROMA TOMATO			8.95	5,012.00
	25V	NC	25V NC	LG			
1458	Total			SALES AMOUNT			12,053.10
				OTHER COST AMOUNT			
REMARKS	CURRENCY	USD		TOTAL AMOUNT DUE:			12,053.10

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(c) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1936 (7 U.S.C. 499e(c)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

REMITTANCE  
TO:  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SHIP TO:  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469  
SAMMYCA

SHIP TO:  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083  
SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/26/08	NET 10	3/08/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
240	TM	TM	ROMA TOMATO 25V CQ	MD	10.95	2,628.00
176	TM	TM	TOMATO 25V CQ	3X4	10.95	1,927.20
88	TM	TM	TOMATO 25V CQ	4X5	10.95	963.60
176	TM	TM	TOMATO 25V CQ	5X5	10.95	1,927.20
176	TM	TM	TOMATO 25V CQ	5X6	10.95	1,927.20
856	Total				SALES AMOUNT	9,373.20
					OTHER COST AMOUNT	
REMARKS	CURRENCY	USD			TOTAL AMOUNT DUE:	9,373.20

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(a) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499n(n)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

REMIT TO  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SOLD TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469  
SAMMYCA

SHIP TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083  
SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	2/29/08	NET 10	3/15/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
480	TM	TM	ROMA TOMATO 25V CQ	MD	8.95	4,296.00
352	TM	TM	TOMATO 25V NC	4X5	8.95	3,150.40
440	TM	TM	TOMATO 25V NC	5X5	8.95	3,938.00
49	SQ	SQ	GREEN SQ (ITAL) 23V CQ	LG	3.95	193.55
80	SQ	SQ	GREEN SQ (ITAL) 23V CQ	MD	3.95	316.00
239	SQ	SQ	GREEN SQ (ITAL) 23V CQ	XF	3.95	944.05
1640	Total			SALES AMOUNT	12,838.00	
				OTHER COST AMOUNT		
REMARKS	CURRENCY	USD			TOTAL AMOUNT DUE:	12,838.00

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(c) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499c(d)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES. ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES, UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

REMITTANCE  
CHIQUITA FRESH NA (FRUPAC)  
3005 SOLUTIONS CENTER  
CHICAGO, IL 60677-3000



Page 1

Chiquita Fresh North America L.L.C.

SHIPPING TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083-3469  
SAMMYCA

SHIPPING TO  
SAMMY'S PRODUCE  
1280 N. MELROSE  
P.O. BOX 0095  
VISTA, CA 92083  
SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY.

## SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUE DATE	INTERNAL INFORMATION
NA	F	3/04/08	NET 10	3/15/08	
QUANT.		PRODUCT CODE		PRICE PER	AMOUNT
146	TM TM	TOMATO 25V NC	4X4	8.95	1,306.70
616	TM TM	TOMATO 25V NC	4X5	8.95	5,513.20
606	TM TM	TOMATO 25V NC	5X5	8.95	5,423.70
323	TM TM	TOMATO 25V NC	5X6	8.95	2,890.85
1691	Total		SALES AMOUNT		15,134.45
			OTHER COST AMOUNT		
REMARKS	CURRENCY USD			TOTAL AMOUNT DUE:	15,134.45

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(g) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499e(d)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES, ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE

## INVOICE

**REMIT TO:**  
**CHIQUITA FRESH NA (FRUPAC)**  
**3005 SOLUTIONS CENTER**  
**CHICAGO, IL 60677-3000**



Page 1

Chiquita Fresh North America L.L.C.

**SOLD TO:**  
**SAMMY'S PRODUCE**  
**1280 N. MELROSE**  
**P.O. BOX 0095**  
**VISTA, CA 92083-3469**

SAMMYCA

**SHIP TO:**  
**SAMMY'S PRODUCE**  
**1280 N. MELROSE**  
**P.O. BOX 0095**  
**VISTA, CA 92083**

SAMMYCA

IF NAME AND/OR ADDRESS IS OTHER THAN SHOWN  
PLEASE CORRECT ON REMITTANCE COPY

SEE BACK OF INVOICE REGARDING MEXICAN TOMATO SUSPENSION AGREEMENT

PURCHASE ORD.	SALES TERMS	SHIP DATE	PAYMENT TERMS	DUUE DATE	INTERNAL INFORMATION
NA	F	3/05/08	NET 10	3/22/08	

QUANT.	PRODUCT CODE				PRICE PER	AMOUNT
126	CU CU	CUCUMBER 30V CQ	PL		6.95	875.70
408	TM TM	CHERRY TOMATO 22V CQ	XL		3.05	1,244.40
480	TM TM	ROMA TOMATO 25V CQ	LG		6.95	3,336.00
640	TM TM	ROMA TOMATO 25V CQ	MD		5.95	3,808.00
1654	Total			SALES AMOUNT		9,264.10
				OTHER COST AMOUNT		

REMARKS	CURRENCY USD	TOTAL AMOUNT DUE: 9,264.10
---------	--------------	----------------------------

THE PERISHABLE AGRICULTURAL COMMODITIES LISTED ON THIS INVOICE ARE SOLD SUBJECT TO THE STATUTORY TRUST AUTHORIZED BY SECTION 5(c) OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (7 U.S.C. 499c(c)). THE SELLER OF THESE COMMODITIES RETAINS A TRUST CLAIM OVER THESE COMMODITIES. ALL INVENTORIES OF FOOD OR OTHER PRODUCTS DERIVED FROM THESE COMMODITIES, AND ANY RECEIVABLES OR PROCEEDS FROM THE SALE OF THESE COMMODITIES UNTIL FULL PAYMENT IS RECEIVED.

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE